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Supreme Court, U.S.
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No. 95-822

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1995

RICHARD W. COSSEY, Petitioner

VERSUS

STATE OF LOUISIANA, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS

OPPOSITION OF THE STATE OF LOUISIANA TO PETITION BY RICHARD W. COSSEY FOR WRIT OF CERTIORARI

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The State of Louisiana respectfully submits the following brief in opposition to the petition for Writ of Certiorari filed by the petitioner, Richard W. Cossey.

STATEMENT OF THE CASE

Petitioner, Richard W. Cossey, was arrested on February 22, 1994, for Driving While Intoxicated, third offense. At the time of his arrest, petitioner was transported to the Lake Charles Police Department where a breathalyzer test was conducted. The test indicated a Blood Alcohol Concentration (BAC) in excess of .10%, specifically .212g%BAC.

As a result of his arrest, and in accordance with Louisiana's Implied Consent Law, La. R.S. 32:667 and 668, the petitioner's license was seized and a temporary receipt of his license on a form approved by the Department of Public Safety and Corrections was issued in its place. This temporary receipt provides and serves as notice to the person that he has not more than ten days from the date of arrest to make a written request to the Department of Public Safety and Corrections for an administrative hearing in accordance with the provisions of La. R.S. 32:668.

After a civil administrative hearing, conducted by the Louisiana Department of Public Safety before an administrative law judge, petitioner was found to be a third time DWI offender and the Department of Public Safety suspended petitioner's driver's license for one year. Thereafter, on August 16, 1994, the State of Louisiana, Parish of Calcasieu, proceeded with its criminal action against the petitioner by filing a Bill of Information charging him with Driving While Intoxicated, third offense, a violation of La. R.S. 14:98.

On October 26, 1994, petitioner filed a Motion to Quash the criminal action on the ground that the State's prosecution subjected him to double jeopardy.

After a hearing on February 22, 1995, the trial court denied the defendant's motion on February 24, 1995. On review, the Third Circuit Court of Appeal denied the defendant's writ application, finding no error in the trial court's ruling. State v. Cossey, La. App. 3 Cir. No. K95-515, May 4, 1995. Thereafter, on September 22, 1995, the Louisiana Supreme Court denied the petitioner's application for writ of review without reasons. State v. Cossey, La. No. 95-KK-1344, September 22, 1995.

Petitioner now applies to this Honorable Court for a Writ of Certiorari. The State of Louisiana opposes petitioner's writ application because our state law is settled in this area and does not violate any federal constitutional mandates.

In his application, petitioner alleges two reasons for granting a Writ of Certiorari.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT IN *UNITED STATES V. HALPER, AUSTIN V. UNITED STATES, AND DEPT. OF REVENUE OF MONTANA V. KURTH RANCH, INC.*, AS WELL AS DECISIONS OF OTHER COURTS, WHICH RECOGNIZE THAT A CIVIL SANCTION THAT DOES NOT SOLELY SERVE A REMEDIAL PURPOSE BUT ALSO SERVES EITHER RETRIBUTIVE OR DETERRENT PURPOSES IS "PUNISHMENT" FOR DOUBLE JEOPARDY PURPOSES.

Both the State and Federal constitutions protect against double jeopardy in three distinct situations, which are to prevent: 1) a second prosecution for the same offense after acquittal; 2) a second prosecution for the same offense after conviction; and 3) multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969); La. Const. Art. I, Section 15; U.S. Const. Amend. 5. See also, Butler v. Department of Public Safety and Corrections, 609 So.2d 790 (La. 1992). At issue in the instant case is multiple punishments for the same offense.

From Helvering v. Mitchell, 303 U.S. 391, 58 S.Ct. 630, 82 L.Ed. 917 (1938), to United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989), this Court's test for all civil penalty cases was strict statutory construction. These cases along with Rex Trailor Company v. United States, 350 U.S. 148, 76 S.Ct. 219, 101 L.Ed.149 (1984), and United States v. One Assortment of 89 Firearms, 465 U.S. 354, 104 S.Ct. 1099, 79 L.Ed.2d 361 (1984), were instrumental in developing the double jeopardy law in the civil remedial context.

The crux of these cases is that a government may impose a criminal and a civil sanction with respect to the same act or omission without violating double jeopardy guarantees. However, the civil sanction must not be "so divorced from any remedial goal that it constitutes 'punishment' for the purpose of double jeopardy analysis." United States v. Halper, supra, citing Helvering v. Mitchell, supra.

The Louisiana Supreme Court applied the above standard in Butler, supra. Based on this Honorable Court's jurisprudence, the Louisiana Supreme Court found Louisiana's license suspension procedure to be a civil measure, not a punitive measure. The Louisiana Supreme Court based its decision on the fact that a license revocation or suspension proceeding does not involve a loss of liberty or threat of incarceration. Butler, at 796. In addition, the Louisiana Supreme Court found that "a driver's license suspension is a remedial measure which attempts to protect society from the hazards posed by drunk drivers by removing the driving privileges of those who have been convicted of driving while intoxicated." Butler, at 796. As a result of the suspension, the motorist suffers no loss of liberty, no incarceration or fine, but merely forfeits the privilege of driving on public highways of the state.

The second issue addressed by the Louisiana Supreme Court in Butler, was whether the civil remedial measure of a post-DWI arrest license suspension is of sufficient deterrent force and impact so as to violate the constitutional proscription against multiple punishments for the same offense.

This Honorable Court has previously considered whether and under what circumstances a civil penalty constitutes punishment for the purpose of the Double Jeopardy Clause of the United States Constitution. This Court has found that only in "rare cases" does a civil penalty, imposed after criminal sanctions, implicate the Double Jeopardy Clause of the United States Constitution.

In United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989), the manager of a medical laboratory convicted of submitting 65 false claims for reimbursement under the federal criminal false claims statute. Based on the facts established in the criminal proceeding, the federal government sued Halper under the federal civil False Claims Act. The district court refused to apply the statutory civil penalty on double jeopardy grounds and limited the government's recovery to double the actual damages plus its costs. This Honorable Court held that this was a **"rare case"** in which the imposition of the full statutory penalty would violate the Double Jeopardy Clause of the Fifth Amendment. This Court reasoned that the disparity between the government's actual costs in investigating and prosecuting Halper's false Medicare claims and the actual damage he caused the Medicare program would render the full civil penalty a second punishment. In reaching this conclusion, this Court stated that "a civil as well as a criminal sanction constitutes punishment when the sanction as applied to the individual case serves the goal of punishment and further that under the Double Jeopardy Clause a defendant who already has been punished in the criminal

prosecution may not be subjected to an additional civil sanction to the extent that the second sanction has not been fairly characterized as remedial, but only as a deterrent or retribution."

In Butler, the Louisiana Supreme Court found that Butler's license suspension was temporary (90 days), the last 60 days of which he would be able to obtain a restricted license. Furthermore, Butler's license suspension bears a rational relationship to the legitimate governmental purpose of promoting public safety on Louisiana highways. Therefore, the Louisiana Supreme Court found the statutorily authorized license suspension to be not so divorced from its intended remedial goal so as to amounts to a second punishment for the same offense in violation of double jeopardy.

In the instant case, the petitioner's license was suspended for one year. Petitioner's suspension differs from the suspension in the Butler decision because petitioner has two prior DWI convictions. La. R.S. 32:667 provides that the suspension period is one year for second and subsequent violations occurring within five years of the fist violation. Through this statute, our state legislature has expressed its concern with the danger that multiple offenders cause to other motorists.

Based on the above and foregoing, it is the State's position that the defendant is not subjected to a second punishment for the same offense in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

Petitioner argues in his brief that the above decision by the Louisiana Supreme Court is inconsistent with more recent decisions by this Court. Specifically, petitioner cites Austin v. United States, 509 U.S._____, 113 S.Ct. 2801 (1993) and Dept. of Revenue of Montana v. Kurth Ranch, Inc., 549 U.S._____, 144 S.Ct. 1937 (1994). It is the State's position that these cases, dealing with the Eighth Amendment's excessive fines clause and asset forfeiture laws, have no bearing on the constitutionality of an administrative suspension of a person's driving privilege for multiple DWI convictions.

II. A DECISION BY THIS COURT IS VITAL TO THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM. OVER ONE MILLION DWI ARRESTS OCCUR EACH YEAR. NUMEROUS CASES ARE PENDING IN COURTS THROUGHOUT THE COUNTRY IN WHICH THE ISSUE PRESENTED IN THIS APPLICATION HAS BEEN RAISED. A DECISION BY THIS COURT IS NECESSARY TO PROVIDE UNIFORM GUIDANCE ON THE APPLICATION OF THE DOUBLE JEOPARDY CLAUSE TO CIVIL AND CRIMINAL DWI CASES.

The State of Louisiana submits to this Honorable Court that the law in this area is not uncertain in Louisiana. As explained above, Louisiana has a very recent State Supreme Court decision addressing this issue under both the federal constitution and our state constitution. In that decision, the Louisiana Supreme Court followed jurisprudence established by this Court.

The State submits to this Honorable Court that the present issue has already been decided correctly in Louisiana. Therefore, the State opposes petitioner's Writ of Certiorari.

CONCLUSION

Based upon the above and foregoing reasons, the State of Louisiana respectfully submits that there was no error in the ruling of the Louisiana Supreme Court. Therefore, the application for Writ of Certiorari filed on behalf of the petitioner, Richard W. Cossey, should be denied by this Honorable Court.

Respectfully submitted,

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